"The court has an absolute and unfettered discretion as to the granting or refusing of a stay, and as to the terms upon which it will grant it, and will, as a rule, only grant a stay if there are special circumstances, which must be deposed to on affidavit unless the application is made at the hearing."

Thus, it is incumbent upon the defendant in this case to show from the affidavit the special circumstances to enable this court to grant a stay of execution. Examples of "special circumstances" are many and are enumerated at the footnote of *Halsbury's* Laws *(supra).* However, the leading authority relied upon by the defendant is *Wilson* v. *Church (No. 2)*[1] where Cotton L.J. laid down the principle at p. 458 "... when a party is appealing, exercising his undoubted right to appeal, this Court ought to see that the appeal, if successful, is not nugatory." This principle was applied in *Orion Property Trust Ltd.* v. *Du Cane Court Ltd.*;[2] and in the local case of *Re Kong Thai Sawmill (Miri) Sdn. Bhd.*[3]

From the affidavit of Mr. Chan and the submission of counsel I cannot find anything which would amount to being nugatory in the event the appeal (Supreme Court Civil Appeal No. 173 of 1985) being successful.

My reasons for granting an order for appraisement and sale of the vessel *pendente lite* are quite clear. They are essentially to prevent the vessel from deteriorating which would considerably reduce the price if it was allowed to be floating in the waters of Penang harbour pending the hearing of the main suit. At the same time the cost of maintenance including wages of the crew would increase day by day. Again, upon the sale being successful the proceeds thereof could not in this case be paid to the plaintiff but would be deposited into court pending the final disposal of the civil action. In such circumstances the question asked is: Where on earth is the basis of the allegation that should the appeal against April 15 Order be successful, the result would be nugatory if the stay is refused.

I should also add that the fact that the defendants believe they have a reasonable chance of success in the appeal is no ground for granting a stay. See: *Atkins* v. *Great Western Railway Co.*,[4] where the English Court of Appeal held that strong grounds of appeal are not sufficient to grant the application.

In the premises, I find that the defendants have not shown any special circumstances to enable me to exercise my discretion to grant this application.

For these reasons, I dismiss the defendants' application with costs.

Application dismissed.

Solicitors: *Shearn Delamore & Co.; Lim Kean Siew & Co.; Darshan Singh & Co.*

PUBLIC PROSECUTOR v. YAP SIN PENG

[A.C.J. (Chan J.) November 27, 1985]

[Kuala Lumpur – Federal Territory Criminal Appeal No. 147 of 1985]

Criminal Law and Procedure – Sentence – Charge of acting as bookmaker – Public interest – Betting Ordinance, 1953 s. 6(3) (a).

Gaming – Bookmaker – Sentence enhanced – Public interest.

In this case the respondent had pleaded guilty to the offence of acting as a bookmaker under section 6(3) (a) of the Betting Ordinance, 1953. He was sentenced to a fine of $2,000. The Public Prosecutor appealed against the inadequacy of the sentence. According to the expert the total number of bets accepted and placed on horse racing according to the records was $20,808.

Held: it is in the interest of the public that the unrealistic kind of sentence which was imposed in this case should not be upheld. The sentence should be enhanced by adding a prison term of 18 months and increasing the fine to $20,000 in default six months' imprisonment.

Cases referred to:

(1) *Cheong Ah Cheow* v. *Public Prosecutor* [1985] 2 M.L.J. 257, 259.
(2) *R.* v. *Davies* (1978) 67 Cr. App. R. 207, 210.

CRIMINAL APPEAL.

Tan Hock Chuan (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent in person.

Cur. Adv. Vult.

Chan J. : On April 15, 1985, at the Magistrate Court (Cik Salmah Kasim) at Jalan Duta, Kuala Lumpur, the respondent Yap Sin Peng, after pleading guilty to the offence of acting as a bookmaker

under section 6(3) (a) of the Betting Ordinance 1953, was sentenced to a fine of $2,000. The Public Prosecutor has appealed against the inadequacy of the sentence.

The police had on November 10, 1984 raided a shop at 20 Jalan Lingkungan Berunai which is off Jalan Pudu. They found writing material and records which related to bets placed on horse racing. The respondent Yap who was found in possession of the documents was arrested. According to the expert Inspector Jalil Darus the number of bets accepted came to 5202 tickets. "Taking the normal rate of $4 a ticket, the total [value] of bets was $20,808," said the inspector. In his opinion any person found in possession of these records is a bookmaker as they are a record of bets placed on horse races.

The gross turnover on bets placed at the totalisator at the turf clubs for each race day is in the region of $3 to $4 million. But illicit bookmakers have a much higher gross turnover than that. We do not know and we do not stop to speculate. No accurate estimate can be made as to the enormous amount of the gross turnover on bets placed with illicit bookmakers. Suffice to say that it appears, in all probability, that the total figure is certainly not less than five times (and this is to put it conservatively) that of the gross turnover at the turf clubs on every race day and may very well be a much higher figure. Put conservatively, therefore, the turnover from illicit bookmaking is certainly not going to be less than $15 to $20 million on each race day. By anybody's standards, this is an enormous amount of money that went on bets placed with illicit bookmakers. At a dinner hosted by the Jockey Association of Malaysia last Friday (November 22, 1985) its president Encik Razmy Ashari said that in Malaysia the racing industry contributes some $400 million a year to the Government in the form of taxes and royalties. If the money that went to illicit bookmaking could be accounted for, the Government would have stood to lose in revenue something like $2 billion a year. It could very well be a much higher figure.

At the apex of the illicit bookmaking pyramid are the syndicate heads; the kingpins as they are sometimes called. These people live behind a facade of respectability. Without exception, all have underworld connections. They are the barons of the underworld. Below them are their lieutenants; hoodlums who would carry out their dirty deeds, and their agents, servants and runners. Illicit bookmaking breeds violence and corruption. It is organised crime of which the motive is cold calculated greed. In *Cheong Ah Cheow* v. *Public Prosecutor*,[1] I have said:

> "The seriousness of the situation caused by bookmakers in relation to sports in this country needs no emphasis in this court; it is well known to everyone."

These people have given racing a bad name. In order to achieve their ends they have resorted to bribery. Jockeys and police officers are especially vulnerable and many have succumbed and fallen prey to corruption. Jockeys who have complied with their request to prevent a horse from running on its merit so that another horse could win are rewarded generously. Police officers, especially those in the anti-vice and gambling section, are particularly susceptible to their evil influence. Gratification is offered through a process known as "washing." It is common knowledge that bookmakers do place huge bets at the totalisator as a form of reinsurance with the result that they always have with them a large amount of winning tickets. Police officers who have been paid or given these winning tickets could never be caught for corruption under section 4(a) of the Prevention of Corruption Act 1961. "Dirty" money can be "washed" clean in this way: they can prove it too with the winning tickets or with a cheque from the turf club in payment of their winnings. And as for those jockeys and trainers who refuse to co-operate with them or who do not do as they are told, they would be subjected to harassment, intimidation and blackmail. Some have been set upon by hoodlums and maimed. Others have been shot at by assassins and they have barely escaped with their lives.

In March 1983, an attempt was made on the life of trainer Ivan Allan by an assassin outside his home in Singapore. He was hit by four bullets. It almost cost him his life.

In March last year, New Zealander jockey Alwin Tweedie was shot at by four gunmen in Penang. They fired three shots, one of which hit his car.

In August last year, Australian jockey Malcolm Johnston was set upon by four men with iron pipes outside his hotel in Penang. His injuries were so severe his riding career could possibly be considered finished.

In March this year, jockey Velu was stabbed at the car park of his hotel in Ipoh. He was set upon

by three men. They stabbed him in the neck and in the waist. His right leg is now partially paralysed.

And recently on October 25, a stipendiary steward of the Malaysian Racing Association was set upon by two men with iron rods at the Sri Pantai Motel in Tanjong Bungah, Penang. "T.C." as he is popularly known is still in hospital. He may never be able to use his right arm again.

"Racing is regarded as the sport of kings" writes Robert M.B. Rushford in the *National Echo* of August 26, 1984, "but if the 'kings' of the underworld can gain control by threats and violence it is going to be a sorry day for the punters and fans who love the sport just for the sake of the sport itself." In an interview for *The Star* newspaper of March 28, 1985, Velu, speaking from his hospital bed, "urged the Government to step in and break up the Mafia-type syndicates which he alleged controlled 70 per cent of the sport now." "Local jockeys, including stable boys, are often bullied by these syndicates and corruption is well known in racing circles," said Velu.

Of course, the respondent is not responsible for the acts of terrorism which I have just adverted to. Nor am I saying that he should be punished for them. But a bookmaker who operates near the apex of the pyramid of this illicit industry cannot thrive without support from his agents, employees and runners who operate on a smaller scale nearer the base of the pyramid. The respondent says that he was doing it for a "friend." This illicit industry can be crippled if the courts of this country start to hand down stiff prison terms to those who have committed offences relating to bookmaking. Bookmaking is a serious crime and because such offences are rife in the country the courts inevitably must take a grave view and impose a deterrent sentence on those who are minded to commit so evil and profitable a crime.

The courts are determined to do all they can to keep the underworld from infiltrating into legitimate sport in this country and to punish severely anyone who indulge in organised crimes. "We have to remember," said Lawton L.J. in *R.* v. *Davies,*[2] "that it has been the sentencing policy of trial courts for many years now to sentence to longish terms of imprisonment those who indulge in organised crimes. That policy has been approved by this Court."

It is in the interest of the public that the unrealistic kind of sentence which was imposed in this case should not be upheld. Accordingly, the appeal is allowed and I enhance the sentence by adding to it a prison term of 18 months. The fine is also increased from $2,000 to $20,000; in default six months' imprisonment.

Appeal allowed.
Sentence enhanced.

NANI v. W.G. WILLIAMS

[O.C.J. (Edgar Joseph Jr. J.) November 5, 1982, April 25 & 28,1983, June 9 & 11, 1983, January 30, 1984]

[Penang – Civil Suit No. 417 of 1981]

Damages – Fatal accident – Army personnel – Driver wholly to blame – Quantum.

The deceased was a 36-year-old Staff Sergeant in the Malaysian Armed Forces. He was killed in a road accident on July 5, 1981 leaving behind a 26-year-old widow and 3 children aged 12, 8 and 3 years respectively. The defendant driver was found wholly to blame for the collision and now appeals against the quantum of damages.

Held: (1) the plaintiff is awarded as follows:

(a) $20,980 being special damages for pre-trial loss of earnings;

(b) $61,773.88 being general damages for post-trial loss of future earnings in respect of pre-retirement period;

(c) $18,532.17 being general damages for post-trial loss of future earnings in respect of post-retirement period;

(d) $61,797.12 being general damages for loss of pension;

(e) $14,417.34 being general damages for loss of gratuity;

(f) $1,534 being agreed special damages;

(2) the damages are apportioned as follows:

(a) $57,500.51 to the widow;

(b) $35,000 to the daughter Rookini, aged 12;

(c) $35,000 to the daughter Shanti, aged 8;

(d) $50,000 to the son Balamurugan, aged 3;

(3) the children's share of damages be paid to the Public Trustee to be held by him, in trust, pending the attainment of the age of majority in each case but with liberty to apply.

[*Editorial Note:* Appeal by the defendant has been withdrawn. There was no order as to costs and deposit was refunded to the appellant.]

Cases referred to;

(1) *Cookson* v. *Knowles* [1978] 2 All E.R. 604, 612.
(2) *Kow Ah Dek* v. *K. Ratnasingam* [1981] 2 M.L.J. 24, 26.
(3) *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian* [1980] 1 M.L.J. 216.